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U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: FEB 06 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the District Director and the AAO will be affirmed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States with his spouse.

The district director concluded that the applicant failed to establish extreme hardship would be imposed upon his U.S. citizen spouse if his waiver were denied. The application was denied accordingly. *See* Decision of District Director, dated April 12, 2001.

On appeal, counsel asserted that the applicant's spouse has strong ties to the United States, no ties to Mexico, does not speak Spanish and has no cultural history of Mexican society. Counsel stated that the spouse would suffer extreme economic impact if the applicant were removed from the United States and that a waiver should be granted in the exercise of discretion.

On motion to reconsider, counsel states that the AAO should begin its analysis with the factors set forth in *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999). Counsel asserts that hardship to the applicant's extended family and his spouse's child must be considered as well as the applicant's assistance to the community.

The record contains a statement of the applicant's spouse, dated May 8, 2001; an affidavit of the applicant's spouse, dated March 1, 2001; a copy of the naturalization certificate for the applicant's mother; financial and tax documents for the applicant and his spouse; a copy of the deed for property owned by the couple; verification of employment for the applicant; a copy of the U.S. birth certificate of the applicant's spouse and a copy of the marriage certificate for the couple. The entire record was considered in rendering a decision on this application.

The record reflects that:

On September 2, 1986, the applicant was convicted of Battery.

On September 12, 1988, the applicant was convicted of Driving Under the Influence.

On October 17, 1990, the applicant was convicted of Grand Theft.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
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> > (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
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> > (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

On motion to reconsider, counsel states that the applicant's wife and her son, the applicant's stepson, will experience extreme hardship as a result of departure from the United States. Counsel asserts that the applicant's wife has lived her entire life in the United States, has no family in Mexico and does not speak Spanish. Counsel contends that the financial impact of departure from the United States will be extreme for the applicant's spouse and that the customs and culture of Mexico are so different from those of the United States that acclimation will pose hardship to the applicant's wife and her son. *See* Motion to Reconsider, dated September 17, 2001 (referencing Brief on Appeal, dated May 10, 2001).

However, counsel does not establish extreme hardship to the applicant's qualifying relatives if they remain in the United States. The AAO notes that, as U.S. citizens, the applicant's spouse, stepson and mother are not required to depart from the United States as a result of denial of the applicant's waiver request. The applicant's wife asserts that the applicant's mother is "fully dependent on [redacted] and me for all her needs." *See* Affidavit of [redacted]

[redacted] dated March 1, 2001. However, the record does not establish the needs of the applicant's mother. While the applicant and his spouse indicate that they pay for all of her medical care, as she has no medical insurance, the record does not establish that the applicant's mother suffers from any medical conditions that require care. The record does not contain documentation of the medical condition of the applicant's mother beyond the broad assertions of the applicant and his wife. Counsel contends that suitable healthcare would not be available to the applicant's mother in Mexico. *See* Motion to Reconsider, dated September 17, 2001 (referencing Brief on Appeal, dated May 10, 2001). The AAO notes that without documentation evidencing the healthcare needs of the applicant's mother, it is impossible to assess the adequacy of medical care available in Mexico to meet those needs.

Further, counsel contends that the applicant's departure will impose severe financial hardship on his spouse, who has previously lived below the poverty line and is fearful of reverting to that status. *See* Statement of [redacted], dated May 8, 2001. The applicant's spouse contends that if the applicant departs the United States and the family loses his income, she will be unable to function financially. The record does not establish the level of compensation received by the applicant's spouse for her current employment. The AAO notes that the income tax documents submitted for the applicant and his spouse for 1998 evidence that the applicant's spouse earned approximately 50% of the couple's income in that year. *See* U.S. Individual Income Tax Return 1998 and related W-2 Forms submitted for [redacted] Therefore, the record does not demonstrate that the applicant's wife is unable to financially support herself and her son or that she will fall below the poverty line without the presence of the applicant's income. Further, the record does not establish that the applicant cannot continue to financially support his wife and stepson from a location outside of the United States. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO notes that the applicant's spouse states that the applicant provides financial support to his sister. *See* Affidavit of [redacted] dated March 1, 2001. However, any hardship suffered by the applicant's sister is irrelevant to waiver proceedings under section 212(h) of the Act and is therefore not considered. In addition, counsel stresses the active role that the applicant plays in his community. *See* Motion to Reconsider, dated September 17, 2001 (referencing Brief on Appeal, dated May 10, 2001). The AAO notes that hardship that the applicant himself experiences is irrelevant to waiver proceedings under section 212(h) of the Act. The applicant's role in his community would be weighed in determining whether the Secretary should exercise discretion, however that consideration is not reached as the applicant fails to demonstrate extreme hardship to a qualifying relative.

Counsel fails to establish that the prior decision of the AAO was based on an incorrect application of law or Immigration and Naturalization Service [now Citizenship and Immigration Services] policy.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In [redacted] *v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The record does not demonstrate hardship amounting to extreme hardship in this application. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from her husband. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship, as stated in the prior opinion of the AAO.

The applicant in this case has failed to identify any erroneous conclusion of law or statement of fact in his appeal.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of August 21, 2001 dismissing the appeal is affirmed.